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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JOE ARROYO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TP-LINK USA CORPORATION, a
California corporation, and TP-LINK
TECHNOLOGIES CO., LTD., a
People's Republic of China corporation,

Defendants.

Case No. 2:16-CV-1044-PA (KKx)

**NOTICE OF MOTION AND
MOTION FOR LIMITED
RECONSIDERATION OF ORDER
RE SANCTIONS**

*[Filed concurrently herewith:
Declaration of Ari J. Scharg;
Declaration of Jay Edelson and
Declaration of Rafay Balabanian and
[Proposed] Order]*

JUDGE: Hon. Percy Anderson

Hearing Date: July 11, 2016
Time: 1:30 p.m.
Courtroom: 15

1 **TO THE PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on July 11, 2016, at 1:30 p.m., in the
3 Courtroom of the Hon. Percy Anderson, located at the United States District
4 Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Edelson PC
5 (“Edelson”), the attorneys for Plaintiff Joe Arroyo in his individual capacity, will
6 and hereby does move for limited reconsideration of the Court’s Order issued April
7 20, 2016. (Docket No. 145.)

8 This motion is made pursuant to Federal Rule of Civil Procedure 54(b) and
9 Local Rule 7-18, based on new evidence bearing on Edelson’s good faith in seeking
10 *pro hac vice* admission in this case.

11 This motion asks the Court to reconsider *only* its finding that Edelson acted in
12 bad faith while seeking *pro hac vice* admission for one of its attorneys, therefore
13 disqualifying it from representing the putative class. The motion *does not* challenge
14 (1) the Court’s decision that a virtual law office fails to satisfy the requirements of
15 Local Rule 83.2.1.3.4; (2) the denial of Ari J. Scharg’s application for *pro hac vice*
16 admission in this case; or (3) the order that Edelson pay Defendants’ attorney’s fees,
17 which it did last week. Concurrently herewith, Edelson seeks this Court’s
18 permission to withdraw as Mr. Arroyo’s counsel and approve the substitution of
19 new counsel to represent him in both his individual and representative capacities,
20 and the putative class he seeks to represent in the operative complaint.

21 This motion is based on this Notice of Motion and Motion, the attached
22 Memorandum of Points and Authorities, the Declarations of Jay Edelson, Rafey S.
23 Balabanian and Ari J. Scharg, and any other matter or argument that the Court may
24 receive at or before the hearing.

25 This motion is made following telephonic conference with counsel for
26 Defendants TP-Link USA Corporation, pursuant to Local Rule 7-3, which took
27 place on May 9, 2016. Defendant’s counsel stated that they are opposed to the
28 motion.

1 DATED: May 19, 2016

SCHEPER KIM & HARRIS LLP
RICHARD E. DROOYAN
DAVID W. WILLIAMS

4 By: /s/ Richard E. Drooyan

5 Richard E. Drooyan

6 *Attorneys for Edelson PC*

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1 **I. INTRODUCTION**

2 By this Motion for Limited Reconsideration, Edelson PC (“Edelson”) asks
 3 this Court to reconsider its finding that the firm acted in bad faith in seeking *pro hac*
 4 *vice* admission in this case and should, therefore, be disqualified from representing
 5 the putative class. (Docket 145, April 20, 2016 Order at 4, 8.) This motion is based
 6 upon new evidence not previously available, which bears on Edelson’s good faith
 7 efforts to comply with the Local Rules of the Central District of California, to
 8 ensure that its attorneys are qualified to practice in this District and the State of
 9 California in the future, and to protect the interests of the putative class.

10 It is important to note that Edelson is not challenging the Court’s conclusion
 11 that a virtual law office fails to satisfy the requirements of Local Rule 83.2.1.3.4 for
 12 *pro hac vice* admission in the Central District of California. Nor is it seeking
 13 reconsideration of the denial of Ari J. Scharg’s application for *pro hac vice*
 14 admission, or the order to pay Defendants’ attorney’s fees.¹ Edelson understands
 15 and fully accepts the Court’s ruling on those issues, but respectfully submits that the
 16 finding of bad faith should be vacated based on evidence that was previously
 17 unavailable.

18 As a result of this Court’s Order determining that a virtual office does not
 19 satisfy the requirements of Rule 83.2.1.3.4 for *pro hac vice* admission in the Central
 20 District, Edelson has substituted local counsel with bona fide offices in the other
 21 pending cases in this District in which its attorneys have been admitted *pro hac vice*.
 22 Furthermore, three additional Edelson lawyers just passed the February 2016
 23 California bar exam, and Mr. Scharg has registered to take the upcoming California
 24 bar in July 2016. This new information addresses the concern raised by Defense
 25

26
 27 ¹ As stated in Edelson’s Notice of Compliance filed on May 13, 2016,
 28 Edelson has already paid Defendants’ attorney’s fees.

1 Counsel, but not reached by this Court, regarding the frequency with which Edelson
2 attorneys appear in federal and state courts in California. Finally, to protect the
3 interests of the putative class, Edelson has arranged for new attorneys to substitute
4 in as counsel for Plaintiff Joe Arroyo in both his individual and representative
5 capacities.

6 Based upon this newly presented evidence, we respectfully ask this Court
7 only to reconsider its finding that Edelson acted in bad faith, therefore disqualifying
8 it from representing the putative class. This new evidence, coupled with the absence
9 of any previous decision in this District holding that a virtual as opposed to a bona
10 fide office failed to comply with Rule 83.2.1.3.4, warrants reconsideration.

11 **II. STATEMENT OF FACTS**

12 On March 18, 2016, Ari J. Scharg, a partner in Edelson's Chicago office,
13 applied for *pro hac vice* admission after this case was transferred to the Central
14 District following fifteen months of litigation in the Northern District of California.
15 (Docket No. 119.) In an effort to satisfy the requirements of Local Rule 83.2.1.3.4,
16 Mr. Scharg designated Todd Logan, an Edelson associate who is admitted to
17 practice in California, as local counsel relying upon a virtual office rather than a
18 bona fide office in this District. (Docket No. 145, April 20 Order at 2-3.)

19 After reviewing Edelson's Response to the Court's Order to Show Cause,
20 (Docket No. 126, March 24, 2016), and the requirements of the Local Rules, the
21 Court concluded "that the Local Rules' requirement that local counsel maintain an
22 office within the Central District of California requires more than a virtual office."
23 (April 20 Order at 7.) The Court ultimately found that Edelson's "conduct rises to
24 the level of bad faith," (*id.*, at 8), and it denied Mr. Scharg's *pro hac vice*
25 application, ordered Edelson to pay Defendants' attorney's fees, and disqualified
26
27
28

1 Edelson from representing the putative class in this matter.² (*Id.* at 9.)

2 Based upon this Court's finding that a virtual office does not satisfy the
3 requirements of the Local Rules, Edelson has sought out new counsel to substitute
4 as local counsel with a bona fide, physical office in this District for all firm
5 attorneys appearing (or who intend to appear) *pro hac vice* in any other action
6 pending in this District.³ (*See* Balabanian Decl. ¶ 2.) Furthermore, three additional
7 Edelson's attorneys have now passed the California bar, including the Firm's
8 managing partner, Rafey Balabanian. And Mr. Scharg has registered to take the
9 California bar exam this coming July to address the concerns regarding the
10 frequency with which Mr. Scharg appears in California on a *pro hac vice* basis.
11 (Balabanian Decl. ¶ 4; Scharg Decl. ¶ 4.)

12 Finally, Edelson has solicited experienced class action counsel to represent
13 the interests of the putative class in this matter. (*See* Balabanian Decl. ¶ 3.) With
14 the consent of Mr. Arroyo, Edelson is concurrently seeking leave of this Court to
15 withdraw from the case and to substitute John Courtney, of the law firm
16 Girardi | Keese, as local counsel, and David Senoff, of the law firm Anapol Weiss,
17 as counsel for Mr. Arroyo in both his individual and representative capacity on
18 behalf of the putative class in this case. (*See* Balabanian Decl. ¶ 3; Docket No. 149,
19

20 ² Although the Court disqualified Edelson from representing the putative class
21 in this case, it allowed the Firm to continue to represent Mr. Arroyo in his individual
22 capacity. Nevertheless, Edelson seeks to withdraw as counsel for Arroyo
23 individually as well, because it believes that Mr. Arroyo's interests as both an
24 individual and a class representative, and the interests of the class (if certification is
granted), are best served by a new firm that can represent all of those interests.

25 ³ John Courtney, of Girardi | Keese, has agreed to serve as local counsel for
26 the Firm in those other cases. *See, e.g., Tyacke v. First Tennessee Bank N.A.*, Case
27 No. 5:16-cv-00228-JGB-SP (Docket No. 33, Courtney Pro Hac Vice Application).
28 Mr. Courtney maintains a bona fide office at 1126 Wilshire Boulevard, in Los
Angeles.

Request for Approval of Substitution of Counsel.) If the Court grants the Request for Approval of Substitution of Counsel, Mr. Senoff will move to appear *pro hac vice*, designating Mr. Courtney as his local counsel. And if the Court grants that substitution request, Edelson will have no further involvement in this case.

III. ARGUMENT

A. Legal Standard for Reconsideration Under Rule 54(b)

“A district court is authorized to reconsider its decisions pursuant to both the Federal Rules of Civil Procedure and its inherent powers.” *Reinsdorf v. Skechers U.S.A., Inc.*, 296 F.R.D. 604, 614 (C.D. Cal. 2013) (*citing* Fed. R. Civ. P. 54(b) and *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir. 1996)). Under this District’s Local Rules, a motion to reconsider may be brought if the moving party demonstrates “the emergence of new material facts . . . occurring after the time of such decision.” C.D. Cal. L.R. 7-18(b).

We acknowledge that reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted). Further, it “may not be used to raise arguments or present evidence for the first time when they reasonably could have been raised earlier in the litigation.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). In this case, we respectfully ask the Court to reconsider its bad faith finding based upon new evidence, which could not have been presented earlier, regarding the steps Edelson has taken to adhere to this Court’s determination that Local Rule 83.-2.1.3.2 “requires more than a virtual office” in other pending cases, to ensure that Edelson attorneys are qualified to appear in California in future cases, including in the Central District, and to protect the interests of the putative class in this case.⁴

⁴ The Edelson Firm has also paid the Defendants’ attorney’s fees, as ordered (footnote continued)

B. The Court Should Reconsider Its Finding that Edelson Acted in Bad Faith In Applying for *Pro Hac Vice* Admission In This Case

Edelson fully accepts the Court's determination that a virtual office does not meet the requirements of Local Rule 83-2.1.3.4. Indeed, Mr. Scharg and the Firm apologize to the Court for their error in judgment in relying upon a virtual office to meet their local counsel requirements. (Scharg Decl. ¶¶ 2-3; Edelson Decl. ¶¶ 2-3.) While there were no cases in this District precluding the use of a virtual office under the Local Rules, Edelson recognizes that it should have sought this Court's approval for the use of a virtual office in its application for *pro hac vice* admission. To correct this error in other cases, Edelson promptly associated new local counsel with bona fide offices in this District for all Firm attorneys appearing *pro hac vice* in any other action.⁵

Edelson did not intend to circumvent the Local Rules concerning local counsel or deceive the Court. Because Mr. Logan was a member of the California bar, Edelson mistakenly believed he could serve as local counsel with a virtual office in which mail addressed to the firm was forwarded to him, phone calls were automatically transferred to him, and an office was available if needed for a face-to-face meeting in this District. We recognize the Court found that Edelson "could not have acted in good faith" because Mr. Logan resided in California and did not spend time in the Central District. (April 20 Order, p. 6.) We submit, however, Mr.

by this Court. Because payment of these fees merely complies with the Court's order, we do not present it as new evidence upon which a motion for reconsideration can be based.

⁵ One other Edelson partner, Eve-Lynn Rapp, recently filed an appearance in the case of *In re Vizio*, which was transferred to this District by the Judicial Panel on Multidistrict Litigation under case number 16-ml-02693 (JLS) (KESx) (C.D. Cal.). In that case, the Firm has not associated local counsel, since that requirement was waived by the transferee court in this District.

1 Logan's residence would not have been material if Local Rule 83-2.1.3.4, as
2 interpreted by Edelson, permitted local counsel to have a virtual office. That is
3 because Mr. Logan was a member of the California bar and admitted to practice in
4 the Central District of California. Nevertheless, once the Court made clear that the
5 local office requirement of Rule 83-2.1.3.4 could not be met using a virtual office,
6 Edelson acted promptly to ensure compliance with the Local Rule in its other cases
7 in this District by substituting local counsel with bona fide offices in the District.
8 (Balabanian Decl. ¶ 2.)

9 Edelson has also taken steps to address the concerns raised by Defendant's
10 counsel, but not reached by this Court, that its attorneys might be practicing *pro hac*
11 *vice* too frequently in this District. In arguing that Mr. Scharg's *pro hac vice*
12 petition should be rejected, Defendants' attorneys noted that Mr. Scharg has
13 appeared in the Central District on a number of occasions over the past several
14 years, and that *pro hac vice* admission should not be granted repeatedly. (See
15 Docket No. 143, Reply in Opposition to Admission at 6-9.) Addressing this
16 concern, three additional Edelson's attorneys have now passed the California bar,
17 including the Firm's managing partner, Rafey Balabanian. And Mr. Scharg has
18 registered to take the California bar exam this July. Thus, these Edelson attorneys
19 (subject to Mr. Scharg passing the exam) will be able to appear as members of the
20 Bar of this Court in any future cases filed in California. (Scharg Decl. ¶ 4; Edelson
21 Decl. ¶ 4.)

22 Finally, the Firm has secured replacement counsel for Mr. Arroyo and the
23 putative class in this matter. (Balabanian Decl. ¶ 3.) Although the Court's April 20
24 Order allows Edelson to continue to represent Mr. Arroyo in his individual capacity
25 in compliance with the Local Rules, and the Firm respectfully asks this Court to
26 vacate the disqualification sanction (which results from the bad faith finding), it has
27 recognized that the interests of both Mr. Arroyo and the putative class would be best
28 served by a new firm that can effectively represent them both in this case.

1 Accordingly Edelson has secured replacement counsel and will, with leave of the
2 Court, withdraw as counsel so that the new firm can represent Mr. Arroyo in both
3 his individual and representative capacities.

4 Of course, none of these new developments touch on the underlying
5 determination in the Court's April 20 Order that a virtual office is insufficient to
6 meet the local office requirement, which Edelson does not challenge. We offer this
7 new evidence as bearing solely on Edelson's good faith in complying with this
8 District's Local Rules and the Court's determinations. It is certainly true, as the
9 Court observed, that Edelson knew that its local counsel's only office was a virtual
10 office; however, in the absence of any decision by a court in this District to the
11 contrary, Edelson did not act with the knowledge it now has that such an office is
12 not allowed under the Local Rules. (April 20 Order at 8.) Edelson asks that the
13 Court consider the Firm's prompt response to correct this deficiency and comply
14 with Local Rule 83-2.1.3.4 in other cases pending in this District.

15 The new information presented to this Court is similar to the evidence
16 supporting a recent motion for reconsideration of sanctions that was granted by the
17 Court in the Southern District of California. *See Laryngeal Mask Co. v. Ambu A/S*,
18 2009 WL 9530357, at *2 (S.D. Cal. Mar. 20, 2009). Like the Central District, the
19 Southern District permits motions for reconsideration based on new evidence. *Id.* at
20 *1; *see* S.D. Cal. L.R. 7.1(i)(1) (motions for reconsideration must show "what new
21 or different facts and circumstances are claimed to exist which did not exist, or were
22 not shown, upon such prior application"). And like here, the attorney who was
23 sanctioned by the court in *Laryngeal Mask Co.* described his misunderstanding, and
24 how he had acted to correct his error, in his motion for reconsideration. *Id.* The
25 court thereafter granted his motion, noting that while "[t]he basis for imposing
26 sanctions remains, . . . in light of the acceptance of responsibility and apology
27 offered, the Court hereby grants Mr. Faigal's plea for mercy and the Motion for
28 Reconsideration." *Id.* at *2 (internal quotations, citations omitted).

Reconsideration is especially warranted in a case like this one, where no other court had interpreted the local office requirement under Local Rule 83-2.1.3.4 or precluded the use of a virtual office. (*See* April 20 Order at 4-7.) As the Ninth Circuit has noted, sanctions are not usually imposed on parties who acted in the absence of guiding authority. *See, e.g., Tonry v. Security Experts, Inc.*, 20 F.3d 967, 973 (9th Cir. 1994) (“Because the issue is one of first impression, we decline to impose sanctions.”) (abrogated on other grounds); *Bumpus v. Bosma*, 121 F.3d 714 (9th Cir. 1997) (table op.) (reversing sanctions “[b]ecause the issue of law was unsettled and there is no evidence that the claim was brought for an improper purpose”); *see also Whalen v. BMW of N. Am., Inc.*, 864 F. Supp. 131, 134 (S.D. Cal. 1994) (“because the issue of the applicability of assumption of risk in a yacht racing context is an unsettled area of law, plaintiff’s sanction request is properly denied”); *Smiley v. Citibank (S. Dakota), N.A.*, 863 F. Supp. 1156, 1165 (C.D. Cal. 1993) (“the Court recognizes that the law in this area is unsettled and feels that it would be injudicious and unfair to punish parties for raising novel arguments”).

IV. CONCLUSION

Edelson acknowledges, and deeply regrets, its errors in judgment in this case. In light of the remedial measures described above, Edelson respectfully asks this Court to exercise its inherent discretion to vacate its bad faith finding and the disqualification sanction based upon that finding.

DATED: May 19, 2016

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